

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DAVID ERTZINGER)	CASE NO.
783 Reagan Parkway)	
Medina, Ohio 44256)	
)	JUDGE
and)	
)	
DONNA ERTZINGER)	
783 Reagan Parkway)	<u>NOTICE OF REMOVAL</u>
Medina, Ohio 44256)	
)	
Plaintiffs,)	
)	
vs.)	
)	
SHAWN KELLY)	
5054 W. Streetsboro Rd.)	
Richfield, Ohio 44286)	
)	
and)	
)	
MAVERICK RESTORATION, INC.)	
c/o Shawn Kelly, Agent)	
5054 W. Streetsboro Rd.)	
Richfield, Ohio 44286)	
)	
Defendants.)	

TO THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO:

Pursuant to 28 U.S.C. §§ 1331, 1367(a), 1441(a), and 1446, Defendants Shawn Kelly and Maverick Restoration, Inc. (“Maverick”) hereby file this Notice of Removal of the above-captioned action currently pending in the Court of Common Pleas, Summit County, Ohio, Case No. CV-2022-11-3964 (the “State Court Action”) to the United States District Court for the Northern

District of Ohio, Eastern Division, and, reserving all rights, objections, and defenses, represents as follows in support of this Notice of Removal:

1. On January 27, 2024, Plaintiffs David Ertzinger and Donna Ertzinger, filed a Motion for Leave to File Second Amended Complaint in the Summit County Court of Common Pleas, Case No. CV-2022-11-3964 (the “Second Amended Complaint”). Attached hereto as **Exhibit A** is a true and accurate copy of the Second Amended Complaint.

2. On February 12, 2024, the State Court granted the Plaintiffs' Motion and deemed the Second Amended Complaint filed as of the date of the Order. Attached hereto as **Exhibit B** is a true and accurate copy of the February 12, 2024 Order.

3. Per the Order, Maverick had 14 days, or until February 26, 2024, to respond. Removal is therefore timely under 28 U.S.C. § 1446(b)(3) which permits removal within 30 days of service of an amended pleading.

4. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 as Plaintiffs assert a claim and seek relief under federal law.

5. Pursuant to 28 U.S.C. § 1331, United States District Courts have original jurisdiction of all civil actions arising under the laws of the United States. Plaintiffs’ Second Amended Complaint asserts a claim under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (“FLSA”), a federal statute, for the alleged nonpayment of the minimum wage. Given that Plaintiffs’ Second Amended Complaint raises the existence of a federal question on its face, removal of the State Court Action is proper under 28 U.S.C. § 1331.

6. Pursuant to 28 U.S.C. § 1367(a), United States District Courts have supplemental jurisdiction over other claims which are so related to the federal claims that they form part of the same case or controversy. In addition to a claim under the FLSA, the Second Amended Complaint also asserts claims for breach of an oral contract, unjust enrichment, the Ohio Constitution, Article II, Section 34(a), Ohio's Prompt Pay Act, and wage records laws under O.R.C. § 4111.14(F) (collectively, the “State Law Claims”). The State Law Claims are based on

the same employment relationship between the Parties that gave rise to the FLSA claim.

Accordingly, the State Law Claim forms part of the same case or controversy as Plaintiffs' federal claim, such that this Court may properly exercise supplemental jurisdiction over the same.

7. Pursuant to 28 U.S.C. § 1441(a), state court actions over which United States District Courts have original jurisdiction may be removed to the District Court which embraces the place where such action is pending. The United States District Court for the Northern District of Ohio, Eastern Division, is the appropriate venue for this case because it is the United States District Court having jurisdiction over Summit County, Ohio, the place where the State Court Action is pending.

8. At the time of the filing of this Notice of Removal, Maverick has not filed a responsive pleading to Plaintiffs' Second Amended Complaint.

9. Maverick certifies that written notice of the filing of this Notice of Removal will promptly be given to Plaintiffs and the Summit County Clerk of Courts as required by 28 U.S.C. § 1446(d). A copy of the Notice of Filing Notice of Removal to be filed with the Summit County Clerk of Courts is attached hereto as **Exhibit C**.

10. This Notice of Removal is signed pursuant to Federal Rule of Civil Procedure 11, as required by 28 U.S.C. §1446(a).

13. No admission of fact, law, or liability is intended by this Notice of Removal, and Maverick expressly preserves any and all of its defenses, denials, and obligations.

14. Maverick requests that this Court take jurisdiction of the State Court Action to its conclusion and to final judgment to the exclusion of further proceedings on the claims asserted therein in the State Court Action, in accordance with the law.

WHEREFORE, Defendants are entitled to, and hereby do, remove the State Court Action to this Court pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1441 based on the existence of federal question jurisdiction.

Respectfully,

/s/Robert B. Kapitan

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CERTIFICATE OF SERVICE

I certify that on February 26, 2024, the foregoing document was filed electronically through the Court's ECF system. Notice of this filing will be sent by operation of the Court's ECF system, and by electronic mail, to counsel for Plaintiffs as indicated below:

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